IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 739 of 2007

Judgment reserved on: 18.7.2007

Date of Decision: August 1, 2007

M/s Priman Constructions … Petitioner

Versus

State of H.P. & ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. V.K. Ahuja, Judge.

Whether approved for reporting?

For the Petitioner : Mr. Ankush Dass Sood, Advocate

For the Respondents : Mr. M.S.Chandel, Advocate General with Mr. R.M.Bisht, Dy. Advocate General, for respondent No.1.
Mr. Shrawan Dogra, Advocate, for Respondents 2 to 5.
Mr. Suneet Goel, Advocate, for Respondent No.6.

Deepak Gupta, J.

By means of this writ petition, the petitioner has prayed that the action of the respondents in rejecting the lowest tender submitted by him on the ground that less than 3 tenders have been submitted is illegal and liable to be quashed.

The brief facts of the case are that the respondent- HP State Electricity Board (hereinafter referred to as the Board) invited tenders for carrying out Geological Exploration by drilling and

drilling holes to the specified depth. The tenders were to be submitted on or before 26.4.2007 upto 3 pm and they were to be opened on the same day at 3.30 pm. The admitted case of the parties is that the petitioner was the lowest tenderer. However, his tender was rejected by the respondents on the ground that at the time of opening of the tenders, it was found that only 2 tenders were submitted and since the minimum number of three tenders have not quoted their rates, the tenders were cancelled.

The respondents relied upon the instruction number 5.9 of the Purchase Manual-1983-84 which reads as under:-

> "5.9. Generally, as a rule, no tender or quotation shall be accepted unless at least three tenders or quotations have been received. In exceptional cases, where the material is urgently required, the approval of next higher authority shall be obtained, before placing a purchase order in cases where the open or limited tendering attracts only one of two tenders quotations resulting in a total lack of competition."

A perusal of this condition clearly shows that as per procedure followed, normally at least 3 tenders should be submitted and in case 3 tenders have not been submitted then the notice can be cancelled and fresh tenders have to be invited. It is also contended on behalf of the respondent – Board that the purpose of this rule is to avoid forming of cartels with a view to ensure that there is competitive tendering.

As far as this point is concerned, we feel that the action of the Board in rejecting the tender of the petitioner on the ground that less than 3 tenders have been received cannot be said to be

arbitrary or capricious. This is a decision which the Board has taken in accordance with the guidielines laid down in its Purchase Manual. The action of the Board in this regard is an administrative action taken by the competent authority in the commercial interest of the Board. This action is legal and valid.

Another ground raised by the petitioner is that if there were less than 3 tenderers then the Board should not have opened the tenders at all. The stand of the Board is that four tender documents were sold and on opening of the box in which the envolopes containing the tenders were to be placed, it was found that there were four envelopes and, therefore, the tenders were opened. This explanation of the respondent- Board cannot be accepted. The admitted case of the parties is that along with the tender documents earnest money had to be deposited. Admittedly, this earnest money had been deposited only by the petitioner and respondent No.6. It was, therefore, obvious that there were only two eligible valid tenders for consideration. Therefore, in such a situation, if the Board felt that the work was not of an urgent nature, it should not have opened the tenders. By opening the tenders, prejudice has been caused to the petitioner, inasmuch as, his rates have been disclosed and obviously, any party submitting fresh tenders would know the rates of the petitioner. This would prejudicially affect the rights of the petitioner.

Keeping in view the aforesaid discussion, we are of the opinion that though the action of the respondent – Board in calling for fresh tenders was legal, valid and in accordance with

law but its action in opening the tenders was totally illegal and uncalled for.

Coming to the relief, it is obvious that we cannot order that the tender be awarded in favour of the petitioner since fresh tenders have been called. However, since the rights of the petitioner have been adversely and prejudicially affected, we dispose of the petition by directing the respondents that they shall compensate the petitioner by paying Rs.10,000/- as damages to him.

The writ petition is disposed of in the aforesaid terms.

(Deepak Gupta), J.

August 1, 2007. (V.K.Ahuja), J.

s.

In the High Court of Himachal Pradesh Shimla.

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Judgment for consideration, please.

(Deepak Gupta),J

I agree/ do not agree.

(V.K.Ajhuja), J.

List the CWP for pronouncement of judgment on _____ 2007.

(Deepak Gupta), J.

Court Secretary.